No. 713

In the Supreme Court of the United States

OCTOBER TERM, 1955

NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA, PETITIONER

v.

WALTER KRUEGER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SIMON E. SOBELOFF,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
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Attorneys,
Department of Justice, Washington 25, D. C.

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CITATIONS

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of Nina Kinsella, Warden of the Federal Reformatory for Women at Alderson, West Virginia, prays that a writ of certiorari issue to the United States Court of Appeals for the Fourth Circuit to review the above case pending in that court on the appeal of Walter Krueger, respondent herein.

OPINION BELOW

The opinion of the District Court has not yet been reported. A copy is annexed hereto as Appendix A.

JURISDICTION

The order of the District Court denying the petition for a writ of habeas corpus was entered

on February 2, 1956 (Appendix A, *infra*, p. 9). A notice of appeal to the Court of Appeals for the Fourth Circuit was filed on February 6, 1956, and the appeal was docketed in that court on February 21, 1956. The case has not been heard, submitted to, or decided by the Court of Appeals. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether Congress has power under the Constitution to confer jurisdiction on a court-martial to try a dependent wife of a member of the United States Army, residing in quarters provided by the Army in Tokyo, Japan, where her husband was stationed, for the crime of murdering her husband in Japan.

STATUTE INVOLVED

50 U. S. C. 552, 64 Stat. 109, Article 2 of the Uniform Code of Military Justice, provides in pertinent part:

> § 552 PERSONS SUBJECT TO THIS CHAPTER (Article 2)
>
> The following persons are subject to this chapter:
>
> * * * * *
>
> (11) Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, all persons serving with, employed by, or accom-

panying the armed forces without the continental limits of the United States and without the following territories: That part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands * * *.

STATEMENT

Mrs. Dorothy Krueger Smith was tried by a United States Army general court-martial convened in Tokyo, Japan, for the murder of her husband, a colonel in the United States Army, on or about October 4, 1952, at Tokyo, Japan. She was convicted and sentenced to life imprisonment. Her conviction was affirmed by the Board of Review (*United States* v. *Smith,* 10 CMR 350). On review by the Court of Military Appeals of issues with respect to the evidence and instructions regarding insanity and to the jurisdiction of the general court-martial to try a dependent wife, the conviction was affirmed (*United States* v. *Smith,* 5 USCMA 314, 17 CMR 314).

In affirming the conviction, the Board of Review and the Court of Military Appeals held that Mrs. Smith was a person accompanying the armed forces without the United States and within the ambit of Article 2 (11) of the Uniform Code of Military Justice, *supra.* It was established at the trial that Mrs. Smith and her dependent children had entered Japan upon

invitation of the United States Army, with the permission of the Japanese Government, solely as the dependent wife of a United States Army officer stationed there. Her transportation to Japan was accomplished by the Army. She and her husband were assigned quarters in "Washington Heights," a United States Army housing area in Tokyo. She was authorized to use, and did use, the facilities of the commissary, the post exchange and the dispensary which were maintained by the Army. The Board of Review also noted that at the time of the commission of the alleged offense there was in effect an Administrative Agreement under Article III of the Security Treaty Between the United States of America and Japan (Appendix B, *infra*, p. 23). Article XVII of the Administrative Agreement provided (*infra*, p. 33), with qualifications immaterial here, that "the United States service courts and authorities shall have the right to exercise within Japan exclusive jurisdiction over all offenses which may be committed in Japan by members of the United States armed forces, the civilian component, and their dependents * * *."

Following her conviction by the general court-martial in Japan, Mrs. Smith was confined in the Federal Reformatory for Women, Alderson, West Virginia. On December 9, 1955, her father, Lieutenant General Walter Krueger, U. S. Army, Retired, respondent here, filed a petition for a

writ of habeas corpus on her behalf in the United States District Court for the Southern District of West Virginia, directed to the warden of the prison where she is confined, praying for her release on the ground that the court-martial had lacked jurisdiction to try her. On February 2, 1956, the court entered an order discharging the writ and remanding Mrs. Smith to the custody of the warden. In its opinion, dated January 16, 1956, it ruled that the court-martial had jurisdiction to try Mrs. Smith under Article 2 (11) of the Uniform Code of Military Justice, and that the statute was within the competence of Congress to enact under Article 1, Section 8, clause 14, of the Constitution.

REASONS FOR GRANTING THE WRIT

The foregoing statement reveals that this case presents, on substantially parallel facts, the same constitutional issues as those raised by *Reid, Superintendent of the District of Columbia Jail* v. *Clarice B. Covert,* No. 701, now before this Court on direct appeal from the District Court for the District of Columbia. In that case the District Court, on its interpretation of this Court's decision in *Toth* v. *Quarles,* 350 U. S. 11, held that Article 2 (11) is unconstitutional—that Congress has no constitutional power to authorize the trial by court-martial of a dependent wife charged with the murder of her soldier husband on foreign soil. In the instant case the

District Court for the Southern District of West Virginia has upheld the constitutionality of Article 2 (11) as applied to a dependent wife who was tried by court-martial for the murder of her husband overseas. Since the decision adverse to constitutionality in the *Covert* case had to be brought to this Court by direct appeal under 28 U. S. C. 1252, it seems appropriate that the instant decision, raising the same issues on similar facts, be reviewed by this Court at the same time.*

The important question of the constitutionality of Article 2 (11) is directly presented by this case, without any possible complication which may arise in the *Covert* case from the fact that Mrs. Covert's conviction was set aside on review and a retrial by court-martial was ordered in the United States rather than in England. While we believe this additional factor in *Covert* to be immaterial to the ultimate decision (see our Statement as to Jurisdiction, p. 15), it has been pressed by the appellee there as a separate ground for denying court-martial jurisdiction.

As pointed out in our Statement as to Jurisdiction in the *Covert* case, it is important that the armed forces know, as quickly as possible, the

*It is clear, of course, that the party prevailing in the district court may seek certiorari before judgment in the Court of Appeals. See *United States* v. *United Mine Workers*, 330 U. S. 258, 269; *Youngstown Co.* v. *Sawyer*, 343 U. S. 579.

extent of their jurisdiction over dependents who have accompanied the forces abroad. There are approximately 250,000 such dependents now living abroad in many foreign lands under the auspices of the armed forces, and the question of jurisdiction over them is one of great public importance. Cf. *Ex parte Quirin*, 317 U. S. 1, 19–20. Moreover, since the question is already here in the *Covert* case, this seems an appropriate occasion for the invocation of this Court's certiorari jurisdiction before judgment in the Court of Appeals. Cf. *White v. Mechanics Securities Corp.*, 269 U. S. 283, 299; *Johnson* v. *United States Shipping Board*, 280 U. S. 320, 324–325; *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 411–412, 415, n. 2; *United States* v. *Bankers' Trust Co.*, 294 U. S. 240, 243; *Porter* v. *Dicken*, 328 U. S. 252; *Brown* v. *Board of Education*, 344 U. S. 1, 3.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari before judgment should be granted.

SIMON E. SOBELOFF,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
RICHARD J. BLANCHARD,
Attorneys.

FEBRUARY 1956.

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APPENDIX A

United States District Court
For the Southern District of West Virginia

Habeas Corpus No. 1726

UNITED STATES OF AMERICA ON THE RELATION OF WALTER KRUEGER *v.* NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA

John C. Morrison, Esq., Attorney at Law, 305 Morrison Building, Charleston 22, West Virginia; Frederick Bernays Wiener, Esq., Attorney at Law, 1023 Connecticut Avenue, NW., Washington 6, D. C.; Adam Richmond, Esq., Attorney at Law, 7816 Glenbrook Road, Bethesda, Maryland, for Relator.

Duncan W. Daugherty, United States Attorney; Percy H. Brown, Assistant United States Attorney; Lt. Colonel James W. Booth, JAGC, Judge Advocate General's Corps, United States Army; Lt. Colonel Cecil L. Forinash, JAGC, Judge Advocate General's Corps, United States Army, for Respondent.

BEN MOORE, *District Judge.*

OPINION

On January 10, 1953, Mrs. Dorothy Krueger Smith was convicted by a United States Army general court-martial, sitting in Tokyo, Japan, of the premeditated murder of her husband,

Colonel Aubrey D. Smith. The killing occurred on the night of October 3 or early morning of October 4, 1952, at the quarters occupied by the couple within the area of the Washington Heights Housing Project.

Mrs. Smith was sentenced to imprisonment for life. She appealed through all available military channels, but her conviction and sentence were finally affirmed by the Court of Military Appeals on December 30, 1954. She is now held as a prisoner in the Federal Reformatory for Women, a United States Government Penal Institution located at Alderson, in the Southern Judicial District of West Virginia. Her father, Lieutenant General Walter Krueger, U. S. Army, retired, filed a petition with this Court on December 9, 1955, praying for a writ of habeas corpus on her behalf, and for her release from imprisonment on the ground that the court-martial lacked jurisdiction to try her.

I awarded the preliminary writ, and on December 20, 1955, Mrs. Smith was brought into court at Charleston by the respondent, Nina Kinsella, Warden of the institution where she is confined. The only evidence, aside from the allegations and admissions in the petition and return, were the certified record of the entire proceedings in the military courts and boards, both trial and appellate, and a copy of the petition recently filed in the United States District Court for the District of Columbia in the case of *Clarice B. Covert* vs. *Curtis Reid, Superintendent of the District of Columbia jail.* Counsel were given unlimited time to present their arguments, as well as time

to file further briefs in addition to those submitted prior to the hearing.

It is pertinent to observe here that Brigadier General Onslow S. Rolfe, Commander of Headquarters and Service Command, Far East Command, detailed several officers from other commands to serve on the court-martial, among whom was Major General Joseph P. Sullivan. General Sullivan's service was with the concurrence of his commanding officer, Lieutenant General Mark Clark, Commander in Chief, Far East Command. All the other officers who were to sit on the court-martial were subordinate in rank to General Rolfe.

Mrs. Smith, who was represented at the trial and in all stages of her appeal by Brigadier General Adam Richmond, a retired officer of long legal and military experience, made no objection to the composition of the court-martial before any military court. The challenge is brought forth at this hearing for the first time.

In attacking the jurisdiction of the court-martial, petitioner advances two arguments:

1. That the court was illegally constituted, in that one of the officers who composed it was a Major General, whereas the convening officer was a Brigadier General;

2. That Mrs. Smith, being a civilian, was not subject to the Code of Military Justice, under the circumstances which prevailed at the time of the alleged offense and at the time of her trial.

The requirements for eligibility to sit as a member of a general court-martial are set out in Article 25 of the Uniform Code of Military Justice (50 U. S. C. 589) as follows:

> Any officer on active duty with the armed forces shall be eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

There is thus no doubt that Major General Sullivan was eligible in the ordinary sense of the word, to serve as a member of a general court-martial. It is argued by counsel for petitioner that "eligibility" necessarily includes inferiority in rank to the convening officer; and that, since Brigadier General Rolfe, being subordinate in rank to Major General Sullivan, had no authority to order the latter to do anything, he could not therefore make him a member of a general court-martial.

At most, this argument turns on a mere technicality. It is not even pretended that Mrs. Smith suffered any disadvantage, or that her rights were in any way affected by the presence of Major General Sullivan as a member of the court-martial. Actually, General Sullivan was acting under the orders of his superior officer, General Mark Clark. The Manual for Courts-Martial provides for situations of this kind by the following language, (see Manual for Courts-Martial, subparagraph 4f).

> Appointment of members and law officers from other commands of the same armed force.—The convening authority may, with the concurrence of their proper commander, appoint as members of a court-martial * * * eligible persons of the same armed force who are not otherwise under his command. Concurrence of the proper

commander may be oral and need not be evidenced by the record of trial.

General Rolfe's convening of the court was an administrative, as distinguished from an operational command. In civil affairs, it would be regarded merely as an appointment, and it is so referred to in the above excerpt from the Manual for Courts-Martial. I can find nothing in the Code of Military Justice to indicate that in performing such a function distinctions of rank are important. Possibly General Sullivan might have had grounds based on seniority of rank for declining to sit on the court; possibly Mrs. Smith might have objected at the time to his sitting; but he having willingly acceded to the convening order, and she not having objected at any time to his sitting as a member of the court-martial, I hold that the objection to General Sullivan as a member of the court-martial, if there was a substantial objection, has been waived, and cannot now be raised. The applicable rule of decision is found in the case of *Swaim* v. *United States*, 165 U. S. 553, rather than in *McClaughry* v. *Deming*, 186 U. S. 49, relied on by petitioner.

Having concluded that the technical or procedural objection to the jurisdiction of the court-martial is without merit, I am forced to consider the constitutional question raised by the petitioner.

Counsel for petitioner very frankly says that the present effort to procure Mrs. Smith's release on this writ of habeas corpus stems from the recent decision of the United States Supreme Court in the case of *United States of America*,

ex rel., *Audrey M. Toth,* vs. *Donald A. Quarles, Secretary of the United States Air Force,* 76 Sup. Ct. 1 (1955), followed by the action of the District Court of the District of Columbia in freeing Mrs. Clarice Covert in circumstances very similar to those which surround Mrs. Smith. The *Covert* case has not yet been reported.

I think the *Toth* case is readily distinguishable. Toth was a civilian residing in the continental United States, who, at the time charges were made against him, had no connection with the armed forces. The decision in that case turned on the right of Toth to claim the protection of those Constitutional guaranties which secure to persons accused of crime in this country, except those who are in the land or naval forces, the traditional safeguards which accompany every criminal trial in the civil courts. Chief among these are the right to have the charge, if a felony, presented to a grand jury, the right to trial by jury, and to have these rights passed on by courts whose judges are a part of our Constitutional system of civil courts. Not all of these safeguards are or can be provided in a trial by court-martial.

In the *Covert* case the status of the petitioner was that of a person who, having been charged and convicted by a United States Army court-martial in a foreign land, was now within the borders of the United States, her conviction reversed, and she, no longer a follower of the army, merely awaiting trial on the original charge. Judge Tamm thought that under those circumstances the principle announced in the *Toth* case obliged him to grant her freedom pursuant to the

writ of habeas corpus. I do not think it necessary, because of the different circumstances in the case before me, either to adopt or reject his reasoning.

Mrs. Smith's situation differed from that of Toth in at least two significant respects:

(1) She was not living in the United States, nor present there when she was charged with the murder of her husband;

(2) She was connected with the army as a person "accompanying the armed forces without the continental limits of the United States;" both when she committed the act and when she was arrested and tried for it.

It may be useful at this point to examine the sections of Article 2 of the Code of Military Justice, "Title 50, U. S. C. A., § 552," which specify the conditions under which persons accompanying the armed forces may be tried by court-martial.

The pertinent sections of Article 2 read as follows:

> The following persons are subject to this (chapter):
>
> * * *
>
> (10) In time of war, all persons serving with or accompanying an armed force in the field;
>
> (11) Subject to the provisions of any treaty or agreement to which the United States is or may be a party, or to any accepted rule of international law, all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States.
>
> * * *

It is to be observed that Article 2 (10) gives unlimited court-martial jurisdiction over followers of the army in time of war and in the field. While it is not argued by counsel for petitioner that Article 2 (10) in any way exceeds the Constitutional power of Congress, it is proper, I think, to point out the distinctions drawn by Congress itself between Article 2 (10) and Article 2 (11).

The reason for such a broad grant of court-martial jurisdiction in time of war is obvious. It is essential that the operations of an army in the field be unobstructed by the acts of any person, whatever his status. Even if the Constitution were silent on the subject, military commanders in the field of war would nevertheless have the usual and necessary court-martial powers by virtue of the law of war itself. Congress having been granted in the Constitution the powers to "declare war" and to "raise and support armies," as well as to "make rules for the government and regulation of the land and naval forces," the last mentioned power, insofar as it is to operate in time of war, is referable to the others, and is co-extensive in scope with the law of war under which court-martial jurisdiction is permitted over certain classes of civilians. *Madsen* v. *Kinsella*, 343 U. S. 341 (1952).

Article 2 (11) is not limited to a time of war or to the field of action. It purports to extend the coverage of the Code of Military Justice (and hence the jurisdiction of courts-martial) to all persons "accompanying the armed forces" abroad. This coverage, however, is conditional. If some accepted rule of international law or the

terms of some treaty or agreement to which the United States is a party are applicable to a particular case, then by its own limitations Article 2 (11) does not come into play.

Now, it is a well recognized maxim of the law of nations that a citizen of one country who commits a local crime in another country is amenable to the laws of the latter. In the absence of a treaty he is entitled to claim no extra-territorial rights. If he believes himself to have been unfairly dealt with, his only recourse is through diplomatic channels. From this maxim flows the principle, recognized by the Supreme Court in the case of *In re Ross,* 140 U. S. 453 (1891), and never repudiated in any case that I have found, that the United States Constitution gives no protection to persons accused of committing local crimes in foreign countries.

Counsel for petitioner, in his brief and in argument, has cited several cases from which he argues that the doctrine that the Constitution does not "follow the flag" is outmoded, and is not now the law. *United States* v. *Flores,* 289 U. S. 137 (1933); *Blackmer* v. *United States,* 284 U. S. 421 (1932); *United States* v. *Bowman,* 260 U. S. 94 (1922); *Jones* v. *United States,* 137 U. S. 202 (1890); *Best* v. *United States,* 184 F. 2d 131 (1st Cir. 1950). On examination of those cases it is found that in every instance the crime involved was one denounced by some statute of the United States, and triable in some one of our District Courts. In no instance has it been even contended that a person accused of a purely local crime in a foreign country may claim any of the procedural

rights guaranteed in the Constitution of the United States.

It is plain, therefore, that the rule of *Toth* v. *Quarles* does not apply here. Still, as I have indicated, it is not enough to find that the provisions of our Bill of Rights and other prohibitory sections of our Constitution did not stand between Mrs. Smith and her trial by court-martial. If the jurisdiction is to be sustained, we must go farther, and discover in that instrument an affirmative grant of Congressional power, either expressly or by necessary implication.

It is in evidence that in the year 1952 the newly reorganized Government of Japan entered into a treaty with the United States, which was duly ratified by the Senate. By an administrative agreement implementing that treaty, the Japanese Government ceded to the United States, through its military courts and authorities, all jurisdiction to try offenses committed in Japan by dependents of members of the armed forces, excluding those of Japanese nationality. Had this treaty been in effect at the time Article 2 (11) of the Code of Military Justice was enacted, it might be cited as the source of Congressional power to pass this act; but it would scarcely be contended, I think, that a piece of legislation, if it were void for lack of constitutional authority when passed, could be validated by a later treaty, even though Congress might subsequently act freely in that field. However, the treaty did remove the limitations which in its absence would have prevented Article 2 (11) from taking effect, in that upon the ratification of the treaty there

was no longer any "accepted rule of international law" or any treaty to the contrary which interfered with its operation.

I am driven to the conclusion that constitutional authority for subjecting civilians accompanying the armed forces to court-martial discipline in time of peace, if such exists, must be found in Article 1, Section 8 of the Constitution, by one of the clauses of which section the power is bestowed on Congress "to make rules for the government and regulation of the land and naval forces," as supplemented by the "necessary and proper" clause.

Courts are slow to reject as unconstitutional a law which has been duly passed by Congress. Congressmen as well as Judges take an oath to support the Constitution of the United States. It is not probable that in any session of that body there should be a dearth of members who are themselves expert in the field of Constitutional law. It is not to be lightly supposed, therefore, that Congress would enact such an important bit of legislation as that which we have under consideration without a careful inquiry into the scope of its own Constitutional power. True it is that if a law of Congress clearly transgresses some positive prohibition expressed in the Constitution it is the duty of a court to strike it down; but where, as here, the problem is merely to find authority for an act which is not forbidden by that instrument, we must proceed more cautiously. In view of the "necessary and proper" clause, we must weigh in the scales in favor of the law's validity every circumstance which may be rea-

sonably assumed to have influenced its enactment. As was said by Chief Justice Marshall in the celebrated case of *McCulloch* v. *Maryland*, 4 Wheat. 316 (U. S. 1819):

> We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional * * * where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.

Since the end of World War II segments of the Armed Forces of the United States have been stationed in many nations throughout the world. In the interest of keeping the morale of the troops on a high level, the Government has encouraged the wives of soldiers to accompany them and live with them at their various posts, and has expended vast sums of money in trans-

portation and maintenance charges for that purpose. It was said in argument and not disputed that there are now no fewer than a quarter of a million civilians of all descriptions accompanying the Armed Forces without the continental limits of the United States and the territories mentioned in Article 2 (11) of the Code of Military Justice. In the existing circumstances, if these civilians are to be exempt from discipline by the military forces in the only available way, namely, by court-martial procedure, a most serious situation is presented. They must then either be subject in all respects to the local laws of the countries where they are stationed, or else they are left free from all restraints whatsoever.

Though I reject the contention of counsel for respondent that a civilian in Mrs. Smith's situation is "part" of the Armed Forces, nevertheless I cannot say with certainty that the power of Congress to provide for court-martial discipline of those civilians accompanying the Armed Forces abroad is not necessarily and properly incident to the express power "to make rules for the government and regulation of the land and naval forces." Neither the *Toth* case nor any other expression by the Supreme Court compels such a conclusion. Therefore, I must uphold Article 2 (11) of the Code of Military Justice in its entirety.

The writ of habeas corpus will be discharged.

Entered: February 2, 1956.

In the United States District Court for the Southern District of West Virginia

Habeas Corpus No. 1726

UNITED STATES OF AMERICA ON THE RELATION OF WALTER KRUEGER, RELATOR

v.

NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, W. VA., RESPONDENT

ORDER

For the reasons stated in the opinion of this Court filed on January 16, 1956, the writ of habeas corpus heretofore issued is discharged, and it is ordered that Mrs. Dorothy Krueger Smith be remanded to the custody of the respondent, Nina Kinsella, Warden of the Federal Reformatory for Women, at Alderson, West Virginia.

(S) BEN MOORE,
United States District Judge.

Dated: ----------

Approved as to form:

(S) Frederick Bernays Wiener,
FREDERICK BERNAYS WIENER,
Counsel for Realtor.

APPENDIX B

Security Treaty

TEXT OF TREATY

Japan has signed a Treaty of Peace with the Allied Powers. On the coming into force of that Treaty, Japan will not have the effective means to exercise its inherent right of self-defense because it has been disarmed.

There is danger to Japan in this situation because irresponsible militarism has not yet been driven from the world. Therefore, Japan desires a Security Treaty with the United States of America to come into force simultaneously with the Treaty of Peace between Japan and the United States of America.

The Treaty of Peace recognizes that Japan as a sovereign nation has the right to enter into collective security arrangements, and, further, the Charter of the United Nations recognizes that all nations possess an inherent right of individual and collective self-defense.

In exercise of these rights, Japan desires, as a provisional arrangement for its defense, that the United States of America should maintain armed forces of its own in and about Japan so as to deter armed attack upon Japan.

The United States of America, in the interest of peace and security, is presently willing to maintain certain of its armed forces in and about Japan, in the expectation, however, that Japan

will itself increasingly assume responsibility for its own defense against direct and indirect aggression, always avoiding any armament which could be an offensive threat or serve other than to promote peace and security in accordance with the purposes and principles of the United Nations Charter.

Accordingly, the two countries have agreed as follows:

Article I

Japan grants, and the United States of America accepts the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government to put down large-scale internal riots and disturbances in Japan, caused through instigation or intervention by an outside Power or Powers.

Article II

During the exercise of the right referred to in Article I, Japan will not grant, without the prior consent of the United States of America, any bases or any rights, powers or authority whatsoever, in or relating to bases or the right of garrison or of maneuver, or transit of ground, air or naval forces to any third power.

Article III

The conditions which shall govern the disposition of armed forces of the United States of America in and about Japan shall be determined by administrative agreements between the two Governments.

Article IV

This Treaty shall expire whenever in the opinion of the Governments of the United States of America and of Japan there shall have come into force such United Nations arrangements or such alternative individual or collective security dispositions as will satisfactorily provide for the maintenance by the United Nations or otherwise of international peace and security in the Japan area.

Article V

This Treaty shall be ratified by the United States of America and Japan and will come into force when instruments of ratification thereof have been exchanged by them at Washington

In Witness Whereof, the undersigned Plenipotentiaries have signed this Treaty.

Done in duplicate at the City of San Francisco, in the English and Japanese languages, this eighth day of September, 1951.

NOTES EXCHANGED BY SECRETARY ACHESON AND PRIME MINISTER YOSHIDA

September 8, 1951.

EXCELLENCY: Upon the coming into force of the Treaty of Peace signed today, Japan will assume

obligations expressed in Article 2 of the Charter of the United Nations which requires the giving to the United Nations of "every assistance in any action it takes in accordance with the present Charter."

As we know, armed aggression has occurred in Korea, against which the United Nations and its members are taking action. There has been established a unified command of the United Nations under the United States pursuant to Security Council Resolution of July 7, 1950, and the General Assembly, by Resolution of February 1, 1951, has called upon all states and authorities to lend every assistance to the United Nations action and to refrain from giving any assistance to the aggressor. With the approval of SCAP, Japan has been and now is rendering important assistance to the United Nations action in the form of facilities and services made available to the members of the United Nations, the Armed Forces of which are participating in the United Nations action.

Since the future is unsettled and it may unhappily be that the occasion for facilities and services in Japan in support of United Nations action will continue or recur, I would appreciate confirmation, on behalf of your Government, that if and when the forces of a member or members of the United Nations are engaged in any United Nations action in the Far East after the Treaty of Peace comes into force, Japan will permit and facilitate the support in and about Japan, by the member or members, of the forces engaged in such United Nations action; the expenses involved in the use of Japanese facilities and

services to be borne as at present or as otherwise mutually agreed between Japan and the United Nations member concerned. In so far as the United States is concerned the use of facilities and services, over and above those provided to the United States pursuant to the Administrative Agreement which will implement the Security Treaty between the United States and Japan, would be at United States expense, as at present.

Accept, Excellency, the assurance of my most distinguished consideration.

His Excellency
SHIGERU YOSHIDA,
Prime Minister of Japan.

[SEPTEMBER 8, 1951]

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's Note of today's date in which Your Excellency has informed me as follows:

Upon the coming into force of the Treaty of Peace signed today, Japan will assume the obligations expressed in Article 2 of the Charter of the United Nations which requires the giving to the United Nations of "every assistance in any action it takes in accordance with the present Charter."

As we know, armed aggression has occurred in Korea, against which the United Nations and its Members are taking action. There has been established a Unified Command of the United Nations under the United States pursuant to Security Council Resolution of July 7, 1950, and the General Assembly, by Resolution of February

1, 1951, has called upon all states and authorities to lend every assistance to the United Nations action and to refrain from giving any assistance to the aggressor. With the approval of SCAP, Japan has been and now is rendering important assistance to the United Nations action in the form of facilities and services made available to the Members of the United Nations, the armed forces of which are participating in the United Nations action.

Since the future is unsettled and it may unhappily be that the occasion for facilities and services in Japan in support of the United Nations action will continue or recur, I would appreciate confirmation, on behalf of your Government, that if and when the forces of a Member or Members of the United Nations are engaged in any United Nations action in the Far East after the Treaty of Peace comes into force, Japan will permit and facilitate the support in and about Japan, by the Member or Members, of the forces engaged in such United Nations actions; the expenses involved in the use of Japanese facilities and services, over and above those provided to the Administrative Agreement which will implement the Security Treaty between the United States and Japan, would be at United States expense, as at present.

With full cognizance of the contents of Your Excellency's Note, I have the honor, on behalf of my Government, to confirm that if and when the forces of a Member or Members of the United Nations are engaged in any United Nations action in the Far East after the Treaty of Peace

comes into force, Japan will permit and facilitate the support in and about Japan, by the Member or Members of the forces engaged in such United Nations action, the expenses involved in the use of Japanese facilities and services to be borne as at present or as otherwise mutually agreed between Japan and the United Nations Member concerned. In so far as the United States is concerned the use of facilities and services, over and above those provided to the United States pursuant to the Administrative Agreement which will implement the Security Treaty between Japan and the United States would be at United States expense, as at present.

Accept, Excellency, the assurance of my most distinguished consideration.

The Honorable
DEAN ACHESON,
Secretary of State.

ADMINISTRATIVE AGREEMENT

PREAMBLE

Whereas the United States of America and Japan on September 8, 1951, signed a Security Treaty which contains provisions for the disposition of United States land, air and sea forces in and about Japan;

And whereas Article III of that Treaty states that the conditions which shall govern the disposition of the armed forces of the United States in and about Japan shall be determined by administrative agreements between the two Governments;

And whereas the United States of America and Japan are desirous of concluding practical administrative arrangements which will give effect to their respective obligations under the Security Treaty and will strengthen the close bonds of mutual interest and regard between their two peoples;

Therefore, the Governments of the United States of America and of Japan have entered into this Agreement in terms as set forth below:

Article I

In this Agreement the expression—

(a) "members of the United States Armed Forces" means the personnel on active duty belonging to the land, sea or air armed service of the United States of America when in the territory of Japan.

(b) "civilian component" means the civilian persons of United States nationality who are in the employ of, serving with, or accompanying the United States armed forces in Japan, but excludes persons who are ordinarily resident in Japan or who are mentioned in paragraph 1 of Article XIV. For the purpose of this Agreement only, dual nationals, United States and Japanese, who are brought to Japan by the United States shall be considered as United States nationals.

(c) "dependents" means

(1) Spouse, and children under 21;

(2) Parents; and children over 21, if dependent for over half their support upon a member of the United States armed forces or civilian component.

1. Japan agrees to grant to the United States the use of the facilities and areas necessary to carry out the purposes stated in Article I of the Security Treaty. Agreements as to specific facilities and areas, not already reached by the two Governments by the effective date of this Agreement, shall be concluded by the two Governments through the Joint Committee provided for in Article XXVI of this Agreement. "Facilities and areas" include existing furnishings, equipment and fixtures necessary to the operation of such facilities and areas.

2. At the request of either party, the United States and Japan shall review such arrangements and may agree that such facilities and areas shall be returned to Japan or that additional facilities and areas may be provided.

3. The facilities and areas used by the United States armed forces shall be returned to Japan whenever they are no longer needed for purposes of this Agreement, and the United States agrees to keep the needs for facilities and areas under continual observation with a view toward such return.

4. (a) When facilities and areas such as target ranges and maneuver grounds are temporarily not being used by the United States armed forces, interim use may be made by Japanese authorities and nationals provided that it is agreed that such use would not be harmful to the purposes for which the facilities and areas are normally used by the United States armed forces.

(b) With respect to such facilities and areas as target ranges and maneuver grounds which are to be used by United States armed forces for

limited periods of time, the Joint Committee shall specify in the agreements concerning such facilities and areas the extent to which the provisions of this Agreement shall apply.

* * * * *

Article IX

1. The United States shall have the right to bring into Japan for purposes of this Agreemgnt persons who are members of the United States armed forces, the civilian component, and their dependents.

2. Members of the United States armed forces shall be exempt from Japanese passport and visa laws and regulations. Members of the United States armed forces, the civilian component, and their dependents shall be exempt from Japanese laws and regulations on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in the territories of Japan.

3. Upon entry into or departure from Japan members of the United States armed forces shall be in possession of the following documents: (a) personal identity card showing name, date of birth, rank and number, service, and photograph; and (b) individual or collective travel order certifying to the status of the individual or group as a member or members of the United States armed forces and to the travel ordered. For purposes of their identification while in Japan, members of the United States armed forces shall be in possession of the foregoing personal identity card.

4. Members of the civilian component, their dependents, and the dependents of members of the United States armed forces shall be in possession of appropriate documentation issued by the United States authorities so that their status may be verified by Japanese authorities upon their entry into or departure from Japan, or while in Japan.

5. If the status of any person brought into Japan under paragraph 1 of this Article is altered so that he would no longer be entitled to such admission, the United States authorities shall notify the Japanese authorities and shall, if such person be required by the Japanese authorities to leave Japan, assure that transportation from Japan will be provided within a reasonable time at no cost to the Japanese Government.

* * * * *

Article XVII

1. Upon the coming into force with respect to the United States of the "Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces," signed at London on June 19, 1951, the United States will immediately conclude with Japan, at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that Agreement.

2. Pending the coming into force with respect to the United States of the North Atlantic Treaty Agreement referred to in paragraph 1, the United States service courts and authorities shall have the right to exercise within Japan exclusive jurisdiction over all offenses which may be committed in Japan by members of the United States armed

forces, the civilian component, and their dependents, excluding their dependents who have only Japanese nationality. Such jurisdiction may in any case be waived by the United States.

3. While the jurisdiction provided in paragraph 2 is effective, the following provisions shall apply:

(a) Japanese authorities may arrest members of the United States armed forces, the civilian component, or their dependents outside facilities and areas in use by United States armed forces for the commission or attempted commission of an offense, but in the event of such an arrest, the individual or individuals shall be immediately turned over to the United States armed forces. Any person fleeing from the jurisdiction of the United States armed forces and found in any place outside the facilities and areas may on request be arrested by the Japanese authorities and turned over to the United States authorities.

(b) The United States authorities shall have the exclusive right to arrest within facilities and areas in use by United States armed forces. Any person subject to the jurisdiction of Japan and found in any such facility or area, will, on request, be turned over to the Japanese authorities.

(c) The United States authorities may, under due process of law, arrest, in the vicinity of such a facility or area, any person in the commission or attempted commission of an offense against the security of that facility or area. Any such person not subject to the jurisdiction of the United States armed forces shall be immediately turned over to Japanese authorities.

(d) Subject to the provisions of paragraph 3 (c), the activities outside the facilities and areas of military police of the United States armed forces shall be limited to the extent necessary for maintaining order and discipline of and arresting members of the United States armed forces, the civilian component, and their dependents.

(e) The authorities of the United States and Japan shall cooperate in making available witnesses and evidence for criminal investigations and other criminal proceedings in their respective tribunals and shall assist each other in the making of investigations. In the event of a criminal contempt, perjury, or an obstruction of justice before a tribunal which does not have criminal jurisdiction over the individual committing the offense, he shall be tried by a tribunal which has jurisdiction over him as if he had committed the offense before it.

(f) The United States armed forces shall have the exclusive right of removing from Japan members of the United States armed forces, the civilian component, and their dependents. The United States will give sympathetic consideration to a request by the Government of Japan for the removal of any such person for good cause.

(g) Japanese authorities shall have no right of search or seizure, with respect to any persons or property, within facilities and areas in use by the United States armed forces, or with respect to property of the United States armed forces wherever situated.

At the request of the Japanese authorities, the United States authorities undertake, within the

limits of their authority, to make such search and seizure and inform the Japanese authorities as to the results thereof. In the event of a judgment concerning such property, except property owned or utilized by the United States Government, the United States will turn over such property to the Japanese authorities for disposition in accordance with the judgment. Japanese authorities shall have no right of search or seizure outside facilities and areas in use by the United States armed forces, with respect to the persons or property of members of the United States armed forces, the civilian component, or their dependents, except as to such persons as may be arrested in accordance with paragraph 3 (a) of this Article, and except as to cases where such search is required for the purpose of arresting offenders under the jurisdiction of Japan.

(h) A death sentence shall not be carried out in Japan by the United States armed forces if the legislation of Japan does not provide for such punishment in a similar case.

4. The United States undertakes that the United States service courts and authorities shall be willing and able to try and, on conviction, to punish all offenses against the laws of Japan which members of the United States armed forces, civilian component, and their dependents may be alleged on sufficient evidence to have committed in Japan, and to investigate and deal appropriately with any alleged offense committed by members of the United States armed forces, the civilian component, and their dependents, which may be brought to their notice by Japanese authorities

or which they may find to have taken place. The United States further undertakes to notify the Japanese authorities of the disposition made by United States service courts of all cases arising under this paragraph. The United States shall give sympathetic consideration to a request from Japanese authorities for a waiver of its jurisdiction in cases arising under this paragraph where the Japanese Government considers such waiver to be of particular importance. Upon such waiver, Japan may exercise its own jurisdiction.

5. In the event the option referred to in paragraph 1 is not exercised by Japan, the jurisdiction provided for in paragraph 2 and the following paragraphs shall continue in effect. In the event the said North Atlantic Treaty Agreement has not come into effect within one year from the effective date of this Agreement, the United States will, at the request of the Japanese Government, reconsider the subject of jurisdiction over offenses committed in Japan by members of the United States armed forces, the civilian component, and their dependents.

* * * * *

Article XXVII

1. This Agreement shall come into force on the date on which the Security Treaty between the United States and Japan enters into force.

2. Each party to this Agreement undertakes to seek from its legislature necessary budgetary and legislative action with respect to provisions of this Agreement which require such action for their execution.

Article XXVIII

Either party may at any time request the revision of any Article of this Agreement, in which case the two Governments shall enter into negotiation through appropriate channels.

Article XXIX

This Agreement, and agreed revisions thereof, shall remain in force while the Security Treaty remains in force unless earlier terminated by agreement between the parties.

EXCHANGE OF NOTES

UNITED STATES NOTE TO JAPAN

TOKYO, FEBRUARY 28, 1952.

EXCELLENCY:

I have the honor to refer to our discussion on the terms of the Administrative Agreement signed today, in which Your Excellency stated as the opinion of the Japanese Government that, as the occupation of Japan by the Allied Powers comes to an end on the coming into force of the Treaty of Peace with Japan, the use of facilities and areas by United States forces on the basis of occupation requisition also comes to an end on the same date; thereafter, the use of facilities and areas by United States forces must be based upon agreement between the two Governments, subject to the rights which each might have under the Treaty of Peace with Japan, the Security Treaty, and the Administrative Agreement. I hereby con-

firm that such is also the opinion of the United States Government.

In Article II, paragraph 1, of the Administrative Agreement, it is stipulated that, "agreements as to specific facilities and areas, not already reached by the two Governments by the effective date of this Agreement, shall be concluded by the two Governments through the Joint Committee provided for in Article XXVI of this Agreement." The United States Government is confident that our two Governments are agreed that consultation shall be on an urgent basis in order to complete such arrangements at the earliest possible date. With this in mind, the United States Government is prepared to join with the Japanese Government in constituting a preliminary working group, consisting of a representative and the necessary staff from each Government to begin such consultations immediately, with the understanding that the arrangements made by the Preliminary Working Group shall be put into effect as agreed and that the task of the Preliminary Working Group would be taken over by the Joint Committee upon the effective date of the Administrative Agreement.

However, unavoidable delays may arise in the determination and preparation of facilities and areas necessary to carry out the purposes stated in Article I of the Security Treaty. It would be much appreciated, therefore, if Japan would grant the continued use of those particular facilities and areas, with respect to which agreements and arrangements have not been completed by the expiration of ninety days after the effective

date of the Treaty of Peace with Japan, pending the completion of such agreements and arrangements.

Accept, Excellency, the assurances of my highest consideration.

DEAN RUSK,
Special Representative of the President,
of the United States of America.

JAPANESE NOTE TO THE UNITED STATES

TOKYO, FEBRUARY 28, 1952.

EXCELLENCY:

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date in which Your Excellency has informed me as follows:

"I have the honor to refer to our discussion on the terms of the Administrative Agreement signed today, in which Your Excellency stated as the opinion of the Japanese Government that, as the occupation of Japan by the Allied Powers comes to an end on the coming into force of the Treaty of Peace with Japan, the use of facilities and areas by United States forces on the basis of occupation requisition also comes to an end on the same date; thereafter, the use of facilities and areas by United States forces must be based upon agreement between the two Governments, subject to the rights which each might have under the Treaty of Peace with Japan, the Security Treaty, and the Administrative Agreement. I hereby confirm that such is also the opinion of the United States Government.

"In Article II, paragraph 1, of the Administrative Agreement it is stipulated that, 'agreements

as to specific facilities and areas, not already reached by the two Governments by the effective date of this Agreement, shall be concluded by the two Governments through the Joint Committee provided for in Article XXVI of this Agreement.' The United States Government is confident that our two Governments are agreed that consultation shall be on an urgent basis in order to complete such arrangements at the earliest possible date. With this in mind, the United States Government is prepared to join with the Japanese Government in constituting a Preliminary Working Group, consisting of a representative and the necessary staff from each Government, to begin such consultations immediately, with the understanding that the arrangements made by the Preliminary Working Group shall be put into effect as agreed and that the task of the Preliminary Working Group would be taken over by the Joint Committee upon the effective date of the Administrative Agreement.

"However, unavoidable delays may arise in the determination and preparation of facilities and areas necessary to carry out the purposes stated in Article I of the Security Treaty. It would be much appreciated, therefore, if Japan would grant the continued use of those particular facilities and areas, with respect to which agreements and arrangements have not been completed by the expiration of ninety days after the effective date of the Treaty of Peace with Japan, pending the completion of such agreements and arrangements."

The Japanese Government fully shares the desire of the United States Government to initiate

consultations on an urgent basis in order to complete arrangements for the use of facilities and areas at the earliest possible date. The Japanese Government agrees, therefore, to the immediate constitution of the Preliminary Working Group referred to in Your Excellency's Note, with the understanding that the arrangements made by the Preliminary Working Group shall be put into effect as agreed and that the task of the Preliminary Working Group would be taken over by the Joint Committee upon the effective date of the Administrative Agreement.

With full appreciation of the contents of Your Excellency's Note, I have the honor, on behalf of the Japanese Government, to confirm that the Japanese Government will grant to the United States the continued use of those particular facilities and areas, with respect to which agreements and arrangements have not been completed by the expiration of ninety days after the effective date of the Treaty of Peace with Japan, pending the completion of such agreements and arrangements.

Accept Excellency, the assurances of my highest consideration.

KATSUO OKAZAKI
(Minister of State).

U. S. GOVERNMENT PRINTING OFFICE: 1956